

The parties conducted depositions of two key witnesses, a government contracting officer (Charles Ferro) and a project manager (Erin Bishop), in Syracuse, New York, on October 10 and 11, 2018. The parties then scheduled for January and the first week of February 2019, depositions of the principal of the Plaintiff (Claude Mayo), two other party witnesses (another contracting officer who was significantly involved in the project (David Bullard) and the Government's subcontracted construction quality manager (Don Davidson)), and four non-parties (several of the subcontractors that were involved in the project and a representative of the general contractor that took over the project after Plaintiff was terminated).

At the end of the day on December 21, 2018, however, the appropriations act that had been funding the Department of Justice expired. On January 25, 2018, appropriations were restored for three weeks, with further funding to the Department of Justice appropriated on February 15, 2019. During the 35-day period of the lapse in appropriations, Department of Justice attorneys were prohibited from working, even on a voluntary basis, except in very limited circumstances, including "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. Thus, during that 35-day lapse in appropriations, counsel for the defendant was unable to work on this or any other matter, including preparing for or conducting the scheduled depositions. Nor did counsel for plaintiff wish to prepare for depositions that were at that point highly likely to be postponed. Eventually, as the lapse in appropriations continued, the parties were forced to postpone these scheduled depositions.

After addressing witness and counsel availability, the parties have now been able to reschedule some of these postponed depositions during the first week of April 2019, and expect to be able to reschedule the remainder of these depositions later in April or in May 2019. We hope to be able to complete fact discovery by this summer. Given the current schedule, however, an enlargement of deadlines is necessary. Granting this joint request for enlargement

will not cause any material inconvenience or prejudice. Accordingly, the parties respectfully propose that the Court adopt the following modified schedule for discovery in this case:

Close of fact discovery (incl. exchange of documents, depositions)	July 1, 2019
Designation of expert witnesses, if any	August 3, 2019
Plaintiff's expert(s) report due, if any	September 3, 2019
Defendant's expert(s) report due, if any	November 5, 2019
Close of expert discovery (incl. depositions)	January 4, 2020
Parties file joint status report as to how case will proceed (incl. proposed schedule for Rule 56 motion(s) if desired)	January 18, 2020

For the foregoing reasons, and, as set forth in detail above, the parties respectfully request that the Court grant our joint request for modification of the scheduling order.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

s/ Martin F. Hockey
MARTIN F. HOCKEY
Deputy Director

s/ Nicholas J. DiCesare
NICHOLAS J. DICESARE
Partner
BARCLAY DAMON LLP
The Avant Building
200 Delaware Avenue
Suite 1200
Buffalo, NY 14202
Tel: (716) 566-1524
Fax: (716) 566-4069
Email: NDiCesare@barclaydamon.com

Attorney for Plaintiff

s/ Russell J. Upton
RUSSELL J. UPTON
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-3634
Fax: (202) 514-7965
Email: Russell.J.Upton@usdoj.gov

OF COUNSEL

JUSTIN HAWKINS
Assistant General Counsel
Office of the General Counsel
General Services Administration
1800 F Street, N.W.
Washington, D.C. 20405
Tel: (202) 969-7066
Fax: (202) 501-1944
Email: justin.hawkins@gsa.gov

March 19, 2018

Attorneys for Defendant